

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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KEYBANK NATIONAL
ASSOCIATION,

Plaintiff,

vs.

FRANK NIELSEN, *et al.*,

Defendants.

2:10-CV-00352-PMP-VCF

ORDER

Before the Court for consideration are Plaintiff's Motion for Summary Judgment on Defendants' Counterclaims (Doc. #43), Plaintiff's Motion for Leave to Substitute Party (Doc. #45), and Defendants' Countermotion for Summary Judgment on Plaintiff's Claims (Doc. #50). Having considered the fully briefed motions and the arguments of counsel presented at the hearing conducted December 20, 2011, the Court finds as follows:

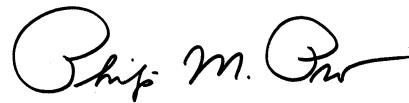
Defendants' allege five claims for relief in their Counterclaim (Doc. #10). Defendants' First Counterclaim for Relief alleges negligent misrepresentation by KeyBank, and Defendants' Third Claim for Relief alleges intentional misrepresentation by KeyBank. Defendants' Second and Fourth Counterclaims allege breach of the implied covenant of good faith and fair dealing, and the Fifth Counterclaim for Relief alleges a claim for declaratory relief. The first four Counterclaims are grounded in Defendants' allegations that Plaintiff KeyBank misrepresented the value of the Subject Property through an appraisal by Kathleen Nylen. The Court finds on the basis of the extensive record adduced

1 by the Parties, there remains no genuine issue of material fact regarding Defendants'
2 misrepresentation allegations, and that Plaintiff KeyBank is entitled to summary judgment
3 on those four Counterclaims. Additionally, Defendants' Fifth Counterclaim for Declaratory
4 Relief is duplicitous of the Claims at issue in Plaintiff's Complaint and is thus also ripe for
5 summary judgment.

6 **IT IS THEREFORE ORDERED** that Plaintiff KeyBank's Motion for
7 Summary Judgment on Defendants' Counterclaims (Doc. #43) is **GRANTED**.

8 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Leave to Substitute
9 Party (Doc. #45) is **GRANTED** and that Defendants' Countermotion for Summary
10 Judgment on Plaintiff's Claims (Doc. #50) is **DENIED**.

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12 DATED: December 22, 2011.

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15 PHILIP M. PRO
16 United States District Judge
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